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16 UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 Equal Employment Opportunity
19 Commission,

20 Plaintiff,

21 v.

22 Go Daddy Software, Inc.,

23 Defendant.

Case No. CV 04 2062 PHX DGC

**DEFENDANT'S MOTION IN
LIMINE REGARDING
DISCRIMINATION NOT
ALLEGED IN COMPLAINT**

24 **I. INTRODUCTION**

25 Defendant Go Daddy Software, Inc. (now known as Go Daddy.com, Inc.)
26 ("Go Daddy"), by and through undersigned counsel, hereby moves for an Order precluding
27 the Plaintiff Equal Employment Opportunity Commission ("EEOC") from introducing any
28 evidence or eliciting testimony related to Youssef Bouamama's so-called "Middle Eastern"
or "Arab" national origin and would show the Court as follows.

II. LAW AND ARGUMENT

**A. Plaintiff Should Be Precluded From Attempting To Mischaracterize
Mr. Bouamama's National Origin.**

Defendant reasonably anticipates that, during trial, Plaintiff will attempt to
characterize Mr. Bouamama's national origin as "Arab" and/or "Middle Eastern" and

1 attempt to elicit testimony that he was somehow discriminated against on these bases.
2 Because Plaintiff has not pled that Go Daddy discriminated against Mr. Bouamama because
3 he was “Arab” and because Plaintiff abandoned all pretense that Mr. Bouamama is “Middle
4 Eastern” during the summary judgment briefing, Plaintiff should not be allowed to introduce
5 evidence or elicit testimony except as it relates to Mr. Bouamama’s conceded national origin
6 – Moroccan.

7 In response to Defendant’s Motion for Summary Judgment, Plaintiff filed a Motion
8 for Leave to Amend its Complaint to add the words “Arab,” “non-Arab,” and “non-
9 Moroccan” to sections related to its national origin allegation (Doc. #96). In its June 27,
10 2006 Order, the Court denied this motion. In the Order denying the Motion, the Court noted
11 that, “Plaintiff appears to have abandoned its claim that Mr. Bouamama was discriminated
12 against because he was Middle Eastern.” Accordingly, the Court will not evaluate the
13 national origin claims to the extent they are based on Mr. Bouamama’s Middle Eastern
14 descent.” *Id.* Because the Court has already ruled on these matters, Plaintiff should abide by
15 the Court’s ruling at trial.

16 **B. Any Reference to Mr. Bouamama as “Middle-Eastern” or “Arab” Would**
17 **Be Irrelevant, Confusing, and Prejudicial.**

18 Evidence that is irrelevant to any issue that the jury must determine is inadmissible at
19 trial. FED. R. EVID. 402; *United States v. Manning*, 509 F.2d 1230 (9th Cir. 1974), *cert.*
20 *denied*, 423 U.S. 824 (1975). Relevant evidence is “[e]vidence having any tendency to make
21 the existence of any fact that is of consequence to the determination of the action more
22 probable or less probable than it would be without the evidence.” FED. R. EVID. 401.

23 To the extent the EEOC seeks to introduce evidence, including testimony and
24 exhibits, attempting to demonstrate that Go Daddy discriminated against Mr. Bouamama
25 because he was “Middle-Eastern” or “Arab,” such evidence should be rejected as irrelevant
26 for the reasons described above. Even if this evidence were relevant, any evidence regarding
27 Mr. Bouamama’s shifting national origins would be unduly prejudicial to Go Daddy and
28 confusing to the jury under Federal Rule of Evidence 403. Rule 403 limits the admissibility

of otherwise relevant evidence when countervailing factors “substantially outweigh” its probative value. FED. R. EVID. 403. The countervailing factors include the danger of unfair prejudice, confusion of the issues, misleading the jury, considerations of undue delay, waste of time, and needless presentation of cumulative evidence. *Id.* All of these factors would be present if the EEOC were permitted to present evidence of Mr. Bouamama’s various alleged national origins.

III. CONCLUSION

For the foregoing reasons, Go Daddy respectfully requests that the Court enter an Order precluding the EEOC from introducing any evidence regarding its request for equitable relief, including Mr. Bouamama’s alleged economic damages.

RESPECTFULLY SUBMITTED this 15th day of September, 2006.

s/ R. Shawn Oller
 J. Mark Ogden
 R. Shawn Oller
 LITTLER MENDELSON, P.C.
 Attorneys for Defendant
 Go Daddy Software, Inc.

I hereby certify that I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants, and mailed a copy of same to the following if non-registrants, this 15th day of September, 2006:

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